

REMARKS/ARGUMENTS

The Examiner is thanked for the performance of a through search. By this amendment, Claims 3, 11, 14, 16, 18, 32, 36, 44, 47, 49, 51 and 53 have been amended. Claims 1-2, 10, 17, 21, 34-35, 43, 50 and 54 have been canceled. No claims have been added. Hence, Claims 3-9, 11-16, 18-20, 22-33, 36-42, 44-49, 51-53 and 55-64 are pending in the application.

SUMMARY OF THE REJECTIONS/OBJECTIONS

Claims 21, 34, 54 and 65 are rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Furthermore, Claims 1-2, 10-11, 16-21, 34-35, 43-44, 47 and 49-54 are rejected under 35 U.S.C. § 102(a) as being anticipated by Tock et al, U.S. Patent No. 6,128,771 (herein referred to as "Tock").

Claims 19 and 52 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tock and further in view of the official notice.

Claims 3-9, 12-15, 22-31, 33, 36-42, 45-46, 48 and 55-64 are object to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claims and any intervening claims. Additionally, claims 32 and 65 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. § 112, second paragraph, set forth in this Office Action.

THE REJECTION BASED ON USE OF TRADEMARK AS LIMITATION

Claims 21, 32, 54 and 65 are rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Office Action stated that Claims 21, 32, 54 and 65 use

the trademark Java as a limitation to identify or describe a particular material or product therefore, rendering the claim indefinite.

Claims 21 and 54 have been cancelled. Therefore, the rejections thereof are no longer at issue. In addition, Claims 32 and 65 as amended no longer claim the trademark Java to identify or describe any particular material or product. Claims 32 and 65, as now stated, comply with the requirements of the Office Action with respect to 35 U.S.C § 112, second paragraph. Therefore, allowance of Claims 32 and 65 is respectfully requested.

THE REJECTIONS BASED ON THE PRIOR ART UNDER 35 U.S.C. § 102(a)

Claims 1-2, 10-11, 16-21, 34-35, 43-44, 47 and 49-54 were rejected under 35 U.S.C. § 102(a) as being unpatentable over Tock. Claims 1-2, 10, 17, 21, 34-35, 43, 50 and 54 have been canceled. Remaining Claims 3, 11, 14, 16, 18, 32, 36, 44, 47, 49, 51 and 53 have been amended and are discussed herein.

Claim 3, 14 and 36

Claim 3, 14 and 36 as amended have been rewritten in independent form including all of the limitations of the base claims and any intervening claims. Claims 3, 14 and 36 all meet the substantive requirements of the Office Action and are in condition for allowance, and such action is respectfully requested.

Claims 16 and 49

With respect to Claims 16 and 49, Tock's disclosure of an "EndTransaction method which is called when a transaction ends successfully, and is used ...to copy all objects in ...to the database." (col 8 lines 45-50) does not equate to Claims 16 and 49's limitation of "inserting at a location based on where, within said first set of instructions, resides a particular instruction that is associated with exiting a target routine in the first set". Rather, Tock does not teach or suggest such a limitation as recited in Claims 16 and 49.

The EndTransaction method described in Tock is not contained in the initial complied code. Rather, the method is contained in the Database class as shown in FIG. 4 and FIG. 1. Without being in the code as initially complied the EndTransaction is not in the code being modified. Therefore, the EndTransaction method cannot possibly be used as the basis for determining where “the new set of one or more instructions are inserted at a location based on where, within said first set of instructions, resides a particular instruction that is associated with exiting a target routine in the first set”. Since Tock does not teach or suggest “inserting at a location based on where, within said first set of instructions, resides a particular instruction that is associated with exiting a target routine in the first set” it is respectfully submitted that Claims 16 and 49 are patentable over Tock.

Claim 18 and 51

The Office Action argued that Tock discloses a modification routine wherein “invoking the modification routine comprises invoking a routine that accumulates data about performance of an application” as recited in Claims 18 and 51. Tock does not teach or disclose a routine that accumulates data about performance of an application.

The Office Action refers to Tock (Col. 5, lines 59-64) requesting a read lock and a write lock on database objects that are then modified. This feature is does not accumulate data about performance of an application. The read/write locks are used to maintain database consistency when updating the database. This feature of Tock does not teach or suggest a modification routine wherein “invoking the modification routine comprises invoking a routine that accumulates data about performance of the application”. Therefore, Claims 18 and 51 are patentable over Tock since Claims 18 and 51 recite limitations neither taught nor suggested by Tock.

Claim 47

It is respectfully submitted that Claim 47 should have been allowed subject to the substantive requirements of the Office Action. Claim 47 is the computer-readable medium version of Claim 14, which was found to be allowable by the Office Action. Claim 47 recites the same limitations as Claim 14 except that Claim 47 refers to a computer-readable medium while Claim 14 is a method claim. Accordingly, Claim 47 has been rewritten in independent format including all the limitations of the base claim and any intervening claims.

Additionally, it is respectfully submitted that the LoadData, and StartTransaction methods recited in Tock (Col. 8 lines 26-44) do not teach or suggest that “the new set of one or more instructions are inserted at a location based on where, within said first set of instructions, resides a particular instruction that is associated with entering a target routine in the first set” (herein referred to as the entering instruction). The entering instruction as recited in Claim 47 is for the purpose of determining where a new set of instructions is to be inserted.

The LoadData and StartTransaction methods are not contained in the initial compiled code. Rather, LoadData and StartTransaction are methods contained in the Database class as shown in FIG. 4 and FIG.1. Since the LoadData and StartTransaction methods of Tock are not contained in the initial compiled code these methods cannot possibly be used as the basis for determining where the “the new set of one or more instructions are inserted at a location based on where, within said first set of instructions, resides a particular instruction that is associated with entering a target routine in the first set”. For the reasons stated above it is respectfully requested that amended Claim 47 is patentable over Tock and allowable in light of Claim 14.

THE REJECTION BASED ON PRIOR ART UNDER 35 U.S.C. § 103(a)

Claims 19 and 52 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Tock in view of the official notice. The Office Action states that Tock does not specifically disclose the method of indicating a number of times the complied instructions are executed. However, the official notice is taken for indicating the number of times the complied instructions are executed and the modification to indicate a number of time completed instructions are executed would be obvious because one of the ordinary skill in the art would be motivated to monitor the performance of a complied program efficiently.

Applicant submits that Claims 19, and 52 are patentable over Tock in view of the official notice. Claims 19 and 52 are dependent claims that depend from currently amended independent Claims 18 and 51 respectively. Because each of the dependent claims includes the limitation of claims upon which they depend, the dependent claims are patentable for at least those reasons the claims upon which the independent claims are patentable. In addition, the dependent claims recited additional limitations which render them patentable.

REMAINING DEPENDENT CLAIMS

The pending claims not discussed so far are dependent claims that depend on an independent claim that is discussed above. Because each of the dependent claims includes the limitations of claims upon which it depends, the dependant claims are patentable for at least those reasons the claims upon which they depend are patentable. Removal of the rejections with respect to the dependant claims and allowance for the dependant claims is respectfully requested. In addition, the dependant claims introduce additional limitations the independently render them patentable.


For the reasons set forth above, it is respectfully submitted that all of the pending claims are now in condition for allowance. Therefore, the issuance of a formal Notice of Allowance is believed next in order, and that action is most earnestly solicited.

The Examiner is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the examination of the present application.

Please charge any shortages or credit any overages to Deposit Account No. 50-1302.

Respectfully submitted,

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on 7/27/2004 by Dani Fajana